

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

RICHARD FLOWERS,	:	
	:	
Charging Party,	:	
	:	<u>ULP 14-09-974</u>
v.	:	
	:	
DELAWARE TRANSIT CORPORATION,	:	Probable Cause Determination
	:	and Order of Dismissal
	:	
Respondent.	:	

Appearances

Richard Flowers, Charging Party, pro se
Aaron M. Shapiro, SLREP/HRM/OMB, for DTC

BACKGROUND

The State of Delaware is a public employer within the meaning of §1302(p) of the Public Employment Relations Act (PERA), 19 Del.C. Chapter 13 (1994). The Delaware Transit Corporation (DTC) is an agency of the State.

Charging Party Richard Flowers (Flowers) is an employee of DTC, a public employee within the meaning 19 Del.C. §1302(o) and a member of the bargaining unit represented by the Amalgamated Transit Union, Local 842 (ATU) for purposes of collective bargaining.

On September 23, 2014, Flowers filed an unfair labor practice charge (Charge) with the Delaware Public Employment Relations Board (PERB) alleging DTC violated 19 Del.C. §1301(2) and (3); §1306; and §1307(a)(1), (3), (4) and (6), which state:

§ 1301. Statement of policy.

It is the declared policy of the State and the purpose of this chapter to promote harmonious and cooperative relationships between public employers and their

employees and to protect the public by assuring the orderly and uninterrupted operations and functions of the public employer. These policies are best effectuated by:

- (2) Obligating public employers and public employee organizations which have been certified as representing their public employees to enter into collective bargaining negotiations with the willingness to resolve disputes relating to terms and conditions of employment and to reduce to writing any agreements reached through such negotiations; and
- (3) Empowering the Public Employment Relations Board to assist in resolving disputes between public employees and public employers and to administer this chapter.

§1306 Public Employment Relations Board

The Board, established by §4006 of Title 14, shall be known as the “Public Employment Relations Board,” shall be empowered to administer this chapter under the rules and regulations which it shall adopt and publish.

§ 1307. Unfair labor practices, enumerated.

- (a) It is an unfair labor practice for a public employer or its designated representative to do any of the following:
 - (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
 - (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
 - (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint or has given information or testimony under this chapter.
 - (6) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

Specifically, Flowers alleges that a Step 4 grievance hearing was held on September 8, 2014, at which neither the “state deputy director for employee relations” nor her designee was present. He charges that by not having a state representative at this meeting, DTC “is not only breaking the contract but taking away the power of the PERB to assist in resolving disputes, at the early stage of the dispute before it cost *[sic]* the state another fortune.”

On October 2, 2014, DTC filed its Answer denying the material allegations set forth in the Charge. Specifically, DTC denied any statutory violation and explained that §7, states, in relevant part:

... A sincere endeavor will be made by the ADMINISTRATION and the UNION to dispose of any difference arising out the application of the AGREEMENT through conferences between the ADMINISTRATION and the UNION. If the grievance is still not resolved at this stage, a meeting shall be held between the Union, and the State Deputy Director for Employee Relations (“Deputy Director”)/Administration within 10 days of the written response at Step 3. If still not resolved at that meeting, the dispute or grievance may be referred to arbitration on request in writing by the UNION. Such request for arbitration shall be made no later than 45 days following the completion of the last applicable step.

DTC asserts, consistent with the contractual language, the parties have a long standing and consistent practice of meeting to attempt to resolve a dispute if the Step 3 answer does not resolve the grievance. DTC representatives, ATU Local 842 representatives and the grievant are included in this meeting. If a resolution is not reached, then a subsequent meeting is scheduled which involves the Office of State Labor Relations and Employment Practices (formerly the Office of Employee Relations).

Under New Matter, DTC contends that the Charge fails to state a claim for which relief may be granted and that Flowers lacks standing to bring this charge and has failed to join an indispensable party, namely the ATU.

On October 8, 2014, Charging Party filed its Response denying the New Matter contained in the State’s Answer.

DISCUSSION

Rule 5.6 of the Rules and Regulations of the Delaware Public Employment Relations Board provides:

- (a) Upon review of the Complaint, the Answer and the Response, the Executive Director shall determine whether there is probable cause to

believe that an unfair labor practice may have occurred. If the Executive Director determines that there is no probable cause to believe that an unfair labor practice has occurred, the party filing the charge may request that the Board review the Executive Director's decision in accord with provisions set forth in Regulation 7.4. The Board will decide such appeals following a review of the record, and, if the Board deems necessary, a hearing and/or submission of briefs.

- (b) If the Executive Director determines that an unfair labor practice has, or may have occurred, he shall, where possible, issue a decision based upon the pleadings; otherwise he shall issue a probable cause determination setting forth the specific unfair labor practice which may have occurred.

For purposes of reviewing the pleadings to determine whether probable cause exists to support the charge, factual disputes revealed by the pleadings are considered in a light most favorable to the Charging Party in order to avoid dismissing a valid charge without the benefit of receiving evidence in order to resolve factual differences. *Flowers v. DART/DTC*, ULP 04-10-453, V PERB 3179, 3182 (Probable Cause Determination, 2004).

Flowers' exclusive allegation is that DTC violated the PERA by not complying with the contractual requirements for a Step 4 grievance hearing. The purpose of the grievance procedure is to resolve disputes concerning application and interpretation of the negotiated terms of the collective bargaining agreement. The purpose of an unfair labor practice, on the other hand, is to resolve statutory issues. The unfair labor practice forum is not an alternative to the contractual grievance procedure.

Flowers has been repeatedly advised through PERB decisions and by the full PERB during a hearing on an appeal of a prior decision that the unfair labor practice process is not a substitute for the grievance procedure and that issues which raise a question as to whether a contractual right or provision has been appropriately and fairly applied must be processed exclusively through the negotiated grievance procedure. *Flowers v. DTC*, ULP 14-06-958, VIII PERB 6197, 6200 (2014).

This Charge fails to assert facts, even when viewed liberally in a light most favorable to

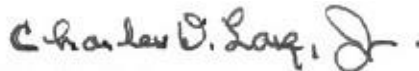
the charging party, which would support a finding of probable cause to believe that an unfair labor practice may have occurred.

DETERMINATION

Considered in a light most favorable to the Charging Party, the Charge, on its face, fails to establish probable cause to believe that an unfair labor practice, as alleged, may have occurred.

WHEREFORE, the Charge is dismissed in its entirety, with prejudice, for failing to state a legitimate claim under the Public Employment Relations Act.

Dated: October 31, 2014

A handwritten signature in dark ink, appearing to read "Charles D. Long, Jr.", is written over a horizontal line.

Charles D. Long, Jr., Hearing Officer
Del. Public Employment Relations Board